

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 250 OF 2005

SEVANTILAL S. KAPASHI .. PETITIONER

Vs.

JAYANTILAL LALCHAND SHAH & ORS ..
RESPONDENTS

Mr. Asif Iqbal I. Patel for petitioners

CORAM:-SMT. RANJANA DESAI, J.

DATED:-19/4/2005

P.C.

The original defendant has challenged in this writ petition order dated 12/1/03 passed by the Small Causes Court in R A E Suit NO. 939 of 2002.

2. On 7/8/04 the trial court has framed issues. Issue No. 7 is as follows:

Whether the plaintiffs' prove that the defendant is not using the suit premises for the purpose for which it

was let out for more than six months preceding the suit?

3. The defendant's objection is to the framing of this issue. It is contended that there must be pleading in the plaint to show that for more than six months period, the suit property has not been used by the tenant for the purpose for which it was let. According to the defendant in the plaint there no such case is made out. Only some vague averments are made that property is not used for the purpose for which it was let and, therefore, the learned Judge ought not to have framed the issue.

4. I have heard the learned counsel for the petitioner. He has reiterated the same submission. He has drawn my attention to the plaint. In the plaint in paragraph 5 it is stated that the defendant is using the said premises for the purpose other than parking the car. In paragraph 6 again it is stated that the suit premises have been used for the purposes other than parking the car. These submissions have been denied by the defendant in his written statement.

5. Prima facie there may be some substance in the contention of the learned counsel for the defendant that the pleadings are not satisfactory but on that ground issue No. 7 cannot be directed to be deleted. In my opinion, no interference is necessary with the impugned order. However, it may be open to the defendant to urge that the plaintiff has not laid any

foundation for this issue. All his contentions are kept open. It is contended that this court has not expressed any final opinion. The trial court should deal with the case independently, Petition is disposed of.

6. Needless to say that interim relief is vacated. Trial to proceed.
7. Trial court be informed.
8. Certified copy expedited.

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